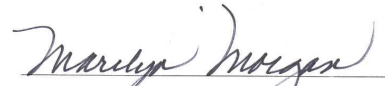




The following constitutes  
the order of the court. Signed December 21, 2005

  
Marilyn Morgan  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:

**SONICBLUE INCORPORATED,  
DIAMOND MULTIMEDIA SYSTEMS,  
INC., REPLAYTV, INC., and SENSORY  
SCIENCE CORPORATION,**

Debtors.

Cases No. 03-51775, 03-51776,  
03-51777, and 03-51778-MM

Chapter 11 cases  
Jointly administered

**MEMORANDUM DECISION AND  
ORDER ON FIFTH INTERIM  
APPLICATION OF PILLSBURY  
WINTHROP LLP FOR COMPENSATION  
AND EXPENSE REIMBURSEMENT**

**INTRODUCTION**

Before the court is the fifth interim application of Pillsbury Winthrop LLP for compensation and reimbursement of expenses as general bankruptcy counsel for the chapter 11 debtors, SonicBlue Incorporated, Diamond Multimedia Systems, Inc., ReplayTV, Inc., and Sensory Science Corporation. Pursuant to 11 U.S.C. § 330, Pillsbury Winthrop requests approval of professional fees in the amount of \$306,518.25 and expense reimbursement of \$10,271.09. Having considered the fifth interim application, the report by Stuart, Maue, Mitchell & James, Ltd., the court appointed fee auditor, of its review and analysis of the fifth interim fee application, and the response of Pillsbury Winthrop to the audit report, the court allows interim compensation in the amount of \$261,681.58 and expense reimbursement of \$10,271.09 and defers ruling on \$7,728.50 in fees.

**BACKGROUND**

The debtors, which designed and marketed consumer electronic products, commenced these jointly administered chapter 11 cases on March 21, 2003 when they were unable to meet their maturing financial obligations. Pillsbury Winthrop LLP was appointed as counsel for the debtors on April 11, 2003. These are liquidating chapter 11 cases. Projecting that they would exhaust their cash reserves by April 20, 2003, the debtors immediately sought and obtained court approval of the sales by auction of their three primary operating businesses, the Go Video, ReplayTV, and Rio product lines, for more than \$40 million.

Following the sale of the three operating business lines, the debtors also sold their modem product line, graphics patents portfolio, computer component inventory, and shares of stock in United Microelectronics Corporation (UMC), which are traded on the Taiwan Stock Market. Substantially all assets of the estates have been liquidated except for avoidance actions. The debtors have in excess of \$75 million in funds, most of which are unencumbered. Secured claims have been paid in full from the proceeds of sale. Unsecured creditors assert claims exceeding \$400 million, of which more than \$130 million are disputed. The debtors reduced secured and priority claims by over \$6.25 million and unsecured claims by over \$8.3 million by objection or subordination during this application period. They also commenced proceedings that could ultimately result in the disallowance of an additional \$107 million in claims. The debtors continue to analyze, object to, and negotiate concerning disputed claims. The debtors have been engaged in concurrent litigation and settlement negotiations with VIA Technologies and S3 Graphics, a common joint venture, both of which have filed claims in the amount of \$70 million for breach of the investment agreement creating the joint venture. The claimants assert that SonicBlue breached the investment agreement by failing to pay certain accounts payable, offered non-ordinary course discounts to accelerate the collection of receivables, failed to turn over receivables collected on behalf of the joint venture, and failed to contribute certain assets to the joint venture. They also assert that they are entitled to liquidated damages if they are enjoined prospectively from enjoying the rights under a patent license between SonicBlue and Intel Corporation, to which the joint venture is entitled under the investment agreement. The debtors are also engaged in related litigation and settlement negotiations with Intel Corporation concerning the parties' respective rights under the patent license, which grants reciprocal rights to use certain graphics patents in the other's portfolio. Intel seeks to terminate the patent license while the

debtor seeks to assume it under § 365. The various claims reportedly involve complex, disputed facts.

The debtors are winding down their limited remaining operations and are focusing their efforts on investing and managing their assets, objecting to claims, and recovering avoidable transfers. During this application period, Pillsbury Winthrop has continued to advise the debtors with respect to their limited remaining operations, including compliance with the requirements of the Securities Exchange Commission, the Corporations Code, and the Bankruptcy Code, maintenance of the debtors' intellectual property, and maintenance of the debtors' books and records. Two consultants remain employed by the debtors to assist in the liquidation of assets and the administration of the estates.

The Official Committee of Unsecured Creditors is actively participating in and monitoring the cases. Although the debtors have completed a draft of a proposed disclosure statement and plan, in consultation with the Committee, they have suspended those efforts in light of the uncertainty regarding the impact of the sizable claims of VIA Technologies and S3 Graphics on the confirmability of and distributions under a plan and other strategic issues, including the possibility of limiting the damages claims through a confirmed plan and more accurately estimating distributions by making further progress on claims objections.

To date, the court has awarded to Pillsbury Winthrop on an interim basis \$2,623,407 in fees and \$235,318.76 in expense reimbursement and has deferred ruling on \$65,959 in fees related to the preparation of the plan and disclosure statement. By its fifth interim application, Pillsbury Winthrop requests approval of additional fees in the amount of \$306,518.25 incurred between October 1, 2004 and January 31, 2005 and expense reimbursement of \$10,271.09.

#### LEGAL DISCUSSION

Section 330 of the Bankruptcy Code provides that the court may award to a trustee, an examiner, or a professional person employed under §§ 327 or 1103 reasonable compensation for actual, necessary services rendered and reimbursement of actual, necessary expenses. In determining the amount of reasonable compensation, the court considers the nature, extent, and value of the professional's services, taking into account all relevant factors, including whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case and whether the services were

1 performed within a reasonable amount of time commensurate with the complexity, importance, and nature of  
2 the problem, issue, or task addressed. 11 U.S.C. § 330(a)(3). The applicant bears the burden of establishing  
3 entitlement to an award and demonstrating that the fees are reasonable. Hensley v. Eckerhart, 461 U.S. 424,  
4 437 (1983).

5  
6 **A. Voluntary Reductions**

7 In this application, Pillsbury Winthrop voluntarily reduced the fees in the Compensation of Professionals  
8 project category by \$5,000. It also voluntarily reduced its request for expense reimbursement by \$1,673.39  
9 for word processing, printing, and imaging charges and by \$1,584.34 for express courier and messenger  
10 services. In response to the audit report by Stuart, Maue, Pillsbury Winthrop has further voluntarily reduced  
11 its request for fees by \$9,408.50 for work related to avoidance actions and by \$2,902.50 for services relating  
12 to the contingent fee agreement.

13  
14 **B. Compensation for Preparation of Plan and Disclosure Statement is Premature**

15 To establish its entitlement to compensation, counsel must demonstrate that the services were necessary  
16 or reasonably likely to benefit the estate at the time they were rendered. In re Mednet, 251 B.R. 103, 108  
17 (B.A.P. 9<sup>th</sup> Cir. 2000). The necessity of the services is dictated in part by the reasonableness of the request  
18 in view of the governing law and the probability of success. See Unsecured Creditors' Comm. v. Puget Sound,  
19 Plywood, Inc., 924 F.2d 955, 959 (9<sup>th</sup> Cir. 1991). Counsel further has an obligation to consider the potential  
20 for recovery and to balance the effort required against the results that might be achieved. Id. at 961. Within  
21 these parameters, the court must examine the circumstances and the manner in which services are performed  
22 and the results achieved in order to arrive at a determination of a reasonable fee allowance. Mednet, 251 B.R.  
23 at 108.

24 As the court has previously indicated, it is premature to determine whether the fees incurred in  
25 connection with the preparation of the debtors' plan and disclosure statement are reasonable. The court is  
26 unable at this juncture to balance the efforts expended against the results achieved. The debtors, in consultation  
27 with the Committee, have determined to suspend activity on the plan and disclosure statement pending further  
28

1 progress in the litigation with VIA Technologies, S3 Graphics, and Intel Corporation and on claims objections.  
2 The court reserves ruling on fees in the amount of \$7,728.50 associated with preparation of the plan and  
3 disclosure statement, as well as related requests to extend the exclusivity period, pending further progress  
4 toward plan confirmation.

5  
6 **C. Time Devoted to Supplemental Employment Application is Excessive**

7 When applying for fees, counsel has a duty to exercise good billing discretion. Hensley v. Eckerhart,  
8 461 U.S. 424, 436 (1983). In determining a reasonable fee allowance, the court must consider whether the  
9 services were necessary or beneficial at the time they were rendered. Mednet, 251 B.R. at 108. It must also  
10 examine the circumstances and the manner in which the services are performed and the results achieved. Id.  
11 Hours that are excessive, redundant, or unnecessary in view of the services performed should not be  
12 compensated.

13 The debtors identified in excess of \$63 million in transfers to approximately 348 different creditors in  
14 the 90 days preceding the commencement of these cases. Since unsecured creditors would be directly  
15 affected by the recovery of avoidable transfers, the Committee desired that the estate pursue the avoidance  
16 actions on a contingent fee basis. To retain the representation, Pillsbury Winthrop negotiated with the  
17 Committee the terms of a contingent fee arrangement whereby Pillsbury Winthrop and Committee counsel  
18 would jointly represent the estate in pursuing avoidance actions. Pillsbury Winthrop prepared a supplemental  
19 employment application to obtain court approval of the contingent fee arrangement. Montgomery Ward  
20 objected to the application. When the proposed terms were presented to the court, however, the court  
21 suggested that the estate consider alternatives and declined to approve the terms, finding that the fee structure  
22 was excessive, not reasonable, and not competitive with the terms of comparable representation in similar  
23 matters. Thereafter, the Committee entertained an alternate proposal by other counsel. The court ultimately  
24 approved the retention of Pillsbury Winthrop and Levene, Neale, Bender, Rankin & Brill to prosecute  
25 avoidance actions on a contingent fee basis after the original terms were modified to be more aligned with the  
26 alternate proposal.

27 The applicant incurred \$3,162 in fees in its fourth interim application and \$12,519.50 in this application,  
28

the time entries for which are set forth in Exhibits J-1 and J-2 of the audit report. In total, it incurred \$15,681.50 in fees in connection with negotiating the terms of representation, preparing the supplemental employment application, responding to the objection and to the court's concerns, and restructuring the terms. The fees related to this matter are excessive, and the court will allow a total of \$4,000. The court previously allowed \$1,581 in fees for this category in the fourth interim application and allows an additional \$2,419. Because Pillsbury Winthrop has already voluntarily reduced its fees in this category by \$2,902.50, the court disallows an additional \$7,198 in fees sought in this category.

**D. Time Devoted to Clerical Services Is Not Compensable by the Estate**

Section 330 contemplates compensation only for professional services. Services that are clerical in nature are properly chargeable to the firm as an overhead expense and not to the bankruptcy estate. Fees for services that are purely clerical, ministerial, or administrative should be disallowed. Missouri v. Jenkins, 491 U.S. 274, 288 fn.10 (1989); Sousa v. Miguel, 32 F.3d 1370, 1374 (9<sup>th</sup> Cir. 1994). Paragraph 18 of the Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees for the United States Bankruptcy Court, Northern District of California ("Fee Guidelines") expressly provides that time spent performing administrative tasks is not compensable.

Some of the services performed by the applicant, such as downloading files, indexing, locating, filing, electronically filing, or serving documents, and conducting PACER searches are clerical in nature. Similarly, oversight of or supervising any of the foregoing activities is also considered clerical. The time entries for these services, which total \$3,102.17, are set forth in Exhibit F to the audit report. In addition, the following entries, which total \$1,014.50, are also for services that are clerical in nature.

Date	Time-Keeper	Description	Hours	Amount
10/20/04	Breeden	Serve notice of hearing, fourth interim fee application and supporting declarations.	1.90	313.50
11/08/04	Breeden	Prepare proof of service, finalize and serve response to fee auditor.	1.80	297.00

11/22/04	Breeden	Research and analyze write-off amounts relating to fourth interim fee application and forward figures to D. Shaumbaugh in Accounting.	0.80	132.00
12/22/04	Breeden	Review and forward electronic version of report and exhibits to Stuart maue report to M. Houle.	0.40	66.00
01/14/05	Freeman	Work on service of response to Stuart Maue report.	0.40	206.00
		<b>TOTAL</b>	<b>5.30</b>	<b>1,014.50</b>

The applicant asserts in its response to the audit report that the charges attributable to clerical services are minimal, and the tasks could not have been performed or delegated more efficiently. It submits that it is more efficient for a professional to perform a clerical task than for that professional to suspend an activity, delegate and supervise the administrative task, and then resume the professional activity. The court acknowledges that performing a clerical task uninterrupted is frequently more efficient than delegation; however, the professional is not entitled to bill the estate at a professional's hourly rate to perform that clerical task. The maxim prohibiting compensation from the estate for clerical services applies without regard to whether an attorney, a paralegal, or a legal secretary performs the task. For these reasons, fees in the amount of \$4,116.67 incurred in connection with the performance of clerical services are disallowed.

**E. The Court May Disallow Compensation for Participation by Multiple Attorneys in Conferences**

Unnecessary duplication of services results in excessive time that cannot be justified and is not compensable. § 330(a)(4). Normally, it is appropriate for only one attorney from a firm to attend a meeting, conference, or hearing. Absent an explanation, participation by multiple attorneys in the same meeting, conference, or hearing constitutes non-compensable duplicative services. Paragraph 16 of the court's Fee Guidelines provides that the court may allow compensation only for the professional with the lowest billing rate but not for the attorney with the higher billing rate.

The applicant has requested compensation for the services of more than one professional who participated in certain conferences. The time entries for these services are set forth below.

**UNITED STATES BANKRUPTCY COURT**  
For The Northern District of California

<b>Date</b>	<b>Time-Keeper</b>	<b>Description</b>	<b>Hours</b>	<b>Amount</b>
		<b>VIA/S3 Litigation</b>		
11/01/04	Freeman	Participate in all hands conference call regarding Intel and VIA.	0.70	339.50
11/01/04	Loran	Participate in conference call re Intel and VIA.	0.90	432.00
11/11/04	Barbarosh	Meet in Los Angeles with R. Bender and C. Rankin re case status and strategy.	1.20	594.00
11/23/04	Barbarosh	Participate in conference call to discuss VIA claims.	1.10	544.50
11/23/04	Freeman	Participate in conference call with O'Melveny, Gershon and M. Smith regarding VIA.	1.20	582.00
11/23/03	Loran	Participate in telephone conference with client group re: proposed claim objection and adversary complaint.	1.40	672.00
11/30/04	Boro	[VIA Claim] Telephone conference with client M. Smith of SonicBlue and attorney M. Walker to review legal arguments on fraudulent conveyances and possible adjustments to Sonicblue balance sheets based on the law to assess fraudulent conveyance claim.	0.50	215.00
12/09/04	Freeman	Participate in all hands conference call regarding Sonic and VIA strategy.	0.70	339.50
12/09/04	Loran	Prepare for and participate in telephone conference with O'Melveny Myers and Creditors' attorneys re: motion to assume license, VIA claims objection.	0.70	336.50
01/03/05	Barbarosh	Participate in conference call with Creditors' Committee to discuss avoidance actions.	0.50	262.50
01/07/05	Loran	Prepare for and participate in call with O'Melveny re: discovery strategy.	0.80	408.00
01/11/05	Loran	Telephone conference with O'Melveny re: discovery coordination of contested matter and adversary case discovery.	2.60	1,326.00
01/13/05	Loran	Telephone call with O'Melveny & Myers attorneys in preparation for telephone conference with creditor's counsel and prepare for same.	0.70	357.00
01/13/05	Loran	Telephone conference with creditor's attorneys re strategy, status.	1.30	663.00
01/21/05	Loran	Prepare for and participate in telephone conference with O'Melveny attorneys and A. Boro re discovery, strategy in adversary case.	2.00	1,020.00



01/27/05	Barbarosh	Conference call with O'Melveny Myers, Creditors Committee, Pillsbury Winthrop team and M. Smith re VIA strategy and status.	1.00	525.00
01/27/05	Freeman	Participate in conference all with professionals regarding Intel/VIA.	1.00	515.00
01/27/05	Loran	Telephone conference with creditors' counsel re strategy.	0.80	408.00
		<b>TOTAL</b>	<b>19.10</b>	<b>9,539.50</b>

For each of these entries, which relate to the VIA Technologies and S3 Graphics litigation, at least one other professional in the firm who has a lower billing rate participated in the same conference. The applicant explains that its attorneys provide services across a broad spectrum of expertise and need to engage in some degree of coordination. However, it has failed to explain the respective roles of the multiple attorneys participating in the various conferences or the necessity of their participation. In some of these instances, four attorneys participated in a conference, three of whom billed at an hourly rate in excess of \$475 or \$500. The fees attributable to these services total \$9,539.50 and are disallowed.

**F. Editing Time Records Is Not Compensable**

While time expended to prepare a fee application, including drafting the narrative, is compensable, time expended to review and edit time entries is not. Where the time entries require revision to conform to the court's standards, the editing services are clerical functions that are not compensable even if they are performed by a professional. In Re CF & I Fabricators of Utah, Inc., 131 B.R. 474, 85 (D. Utah 1991). The applicant incurred \$3,923 in fees to review and edit its time records, which entries are set forth below. These services are not compensable from the estate.

Date	Time-Keeper	Description	Hours	Amount
10/14/04	Breeden	Analyze and edit June 2004 prebills in preparation of fourth interim fee application.	1.80	297.00
10/14/04	Breeden	Analyze and edit July prebills in preparation of fourth interim fee application.	1.80	297.00

10/14/04	Breeden	Analyze and edit August 2004 prebills in preparation of fourth interim fee application.	1.70	280.50
10/14/04	Breeden	Analyze and edit September prebills in preparation of fourth interim fee application.	1.30	214.50
10/15/04	Breeden	Analyze revisions to Exhibit "A" invoice relating to fees included in fourth interim fee application.	0.30	49.50
10/18/04	Breeden	Finalize edits to time entries invoice to fourth interim fee application for final reviews.	2.10	346.50
10/19/04	Breeden	Numerous revisions and edits to time entries regarding final invoice to fourth interim fee application.	2.20	363.00
11/30/04	Breeden	Analyze and augment time entries in preparation of response to fee auditor.	3.20	528.00
01/11/05	Breeden	Augment and edit timekeeper entries as exhibit to response to Stuart Maue report.	2.40	408.00
01/13/05	Breeden	Revise and edit exhibits in support of response to Stuart Maue report and forward same to M. Houle and B. Freeman.	3.90	663.00
01/14/05	Breeden	Revise and finalize all exhibits to response to Stuart Maue for service and filing.	2.80	476.00
		<b>TOTAL</b>	<b>23.50</b>	<b>3,923.00</b>

**G. Services Related to Prosecution of Avoidance Actions is Duplicative of Contingent Fee Arrangement**

The applicant incurred fees of \$9,428.50 in connection with services related to the pursuit of avoidance actions. However, these services are duplicative of those for which the court approved a very generous contingent fee arrangement. The applicant voluntarily reduced its fees in this category by \$9,408.50. A reduction of an additional \$20 appears in order.

1 CONCLUSION

2 For the reasons set forth above, the court denies approval of fees in the amount of \$24,797.17 and  
3 defers ruling on \$7,728.50 of the fees requested in the fifth interim application by Pillsbury Winthrop. Taking  
4 into account the voluntary reductions by the applicant in the amount of \$12,311, the court allows interim  
5 compensation in the amount of \$261,681.58 and expense reimbursement in the amount of \$10,271.09.

6 Good cause appearing, IT IS SO ORDERED.

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8 \*\*\* END OF ORDER \*\*\*  
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Case No. 03-51775-MM

**SERVICE LIST**

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